

Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
Case Summary
Civil Docket

WOCV2005-00197
Citibank NA Trustee v Phelan et al

FILED
CLERK OF COURT
OFFICE

2005 AUG 15 A 9:30

| | | | |
|--------------------|------------|------------------|--|
| File Date | 02/03/2005 | Status | Disposed: transfered to other court (dtrans) |
| Status Date | 03/16/2005 | Session | B - Civil B (18 Worcester) |
| Origin | 1 | Case Type | E99 - Miscellaneous |
| Lead Case | | Track | X |

| | | | | | |
|------------------|------------|--------------------|------------|-------------------|----------|
| Service | 05/04/2005 | Answer | 07/03/2005 | Rule | 12/19/20 |
| Rule 15 | | Discovery | | Rule 56 | |
| Final PTC | 08/02/2005 | Disposition | 09/01/2005 | Jury Trial | No |

PARTIES

Plaintiff

Citibank NA Trustee
Winchendon, MA 01475
Active 02/03/2005

Private Counsel 655475

Raymond C Pelote
Harmon Law Offices (Mark P)
150 California Street
PO Box 610389
Newton, MA 02458-0389
Phone: 617-558-0500
Fax: 617-244-7304
Active 02/03/2005 Notify

Private Counsel 552866

David M Rosen
Harmon Law Offices (Mark P)
PO Box 610389
150 California Street
Newton Highlands, MA 02461-0389
Phone: 617-558-0500
Fax: 617-244-7304
Active 02/03/2005 Notify

Defendant

John P Phelan
812 W Shore Drive
Ashburnham, MA 01430
Service pending 02/03/2005

Private Counsel 109140

John J Curley III
McEvilly & Curley
48 West Street
Suite 1
Leominster, MA 01453
Phone: 978-534-3556
Fax: 978-534-5119
Active 02/28/2005 Notify

Defendant

Wendy W Phelan
c/o Attorney John J Curley III
West Street Suite 1
Leominster, MA 01453
Served: 02/15/2005
Answered: 02/28/2005
Answered 02/28/2005

Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
Case Summary
Civil Docket

WOCV2005-00197
Citibank NA Trustee v Phelan et al

Defendant
David LaBrie
c/o Peter M Mirageas
27 Prospect Street
Marlborough, MA 01752
Answered: 02/09/2005
Answered 02/09/2005

Defendant
United States of America
PO Box 9112 Stop 20800
JFK Federal Building
Boston, MA 02203
Service pending 02/03/2005

Defendant
O'Callaghan Construction Company
c/o Attorney Edwin H Howard Bon
154 Prichard Street
Fitchburg, MA 01420
Service pending 02/03/2005

Defendant
Comm of Mass Department of Revenue
100 Cambridge Street
Boston, MA 02114
Service pending 02/03/2005

Other interested party
United States of America
Active 08/11/2005

Out-of-state attorney
Lydia Bottome Turanchik
US Dept. of Justice
Ben Franklin Station PO Box 55
Washington, DC 20044
Active 08/11/2005 Notify

Private Counsel 544583
Peter M Mirageas
27 Prospect Street
Marlboro, MA 01752
Phone: 508-460-9698
Fax: 508-460-0637
Active 02/17/2005 Notify

Private Counsel 435260
Eileen Ryan McAuliffe
Mass Revenue Dept
PO Box 9565
100 Cambridge Street
Boston, MA 02114-9565
Phone: 617-626-3217
Fax: 617-626-3245
Active 02/22/2005 Notify

Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
Case Summary
Civil Docket

WOCV2005-00197
Citibank NA Trustee v Phelan et al

ENTRIES

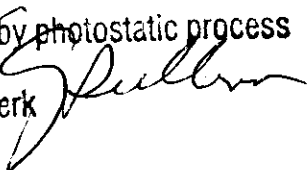
| Date | Paper | Text |
|------------|-------|--|
| 02/03/2005 | 1.0 | Complaint in interpleader (Mortgage Foreclosure Surplus Proceeds) & civil action cover sheet filed |
| 02/03/2005 | | Origin 1, Type E99, Track X. |
| 02/03/2005 | | Filing fee paid in the amount of \$240.00 including \$15.00 surcharge and \$20.00 security fee.(\$275.00) |
| 02/09/2005 | 2.0 | ANSWER and CROSS-CLAIMS of David LaBrie(Defendant) |
| 02/15/2005 | 3.0 | Certificate of acceptance of service for Wendy W Phelan by Attorney John J. Curley, III. |
| 02/15/2005 | 4.0 | Certificate of service of Peter M Mirageas re: acceptance of service for David LaBrie |
| 02/15/2005 | | Atty Eileen Ryan McAuliffe's notice of appearance for Comm of Mass Department of Revenue |
| 02/23/2005 | 6.0 | SERVICE RETURNED (summons): Acceptance of Service for O'Callaghan Construction Company, by Attorney Edwin H Howard of Bonville & Howard on February 09, 2005 |
| 02/28/2005 | 7.0 | ANSWER: Wendy W Phelan(Defendant) |
| 03/16/2005 | 8.0 | Deft. United States notice of Removal to US District Court of Massachusetts & certificate of service |

EVENTS

A true copy by photostatic process

Attest:

Asst. Clerk



MAK 16 2005

ATTEST:

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS.

CLERK

CITIBANK, N.A., AS TRUSTEE,

Plaintiff,

v.

JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LABRIE, THE UNITED STATES
OF AMERICA, O'CALLAGHAN
CONSTRUCTION CO., and THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,

Defendants.

COPY

2005 11 17

Civil No.

05-40045 FDS

05-197B

NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

The defendant United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, respectfully states as follows:

1. The United States of America has been named as a defendant to the civil action that is now pending in the Superior Court Department, Worcester County, for the Commonwealth of Massachusetts, entitled Citibank, N.A., as Trustee v. John Phelan, et al., Case No. 05-0197-B.

2. This action is removable to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. § § 1441, 1442 and/or 1444.

3. No prior removal of this action has been attempted.

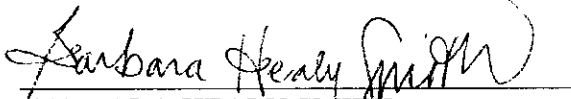
4. The removal of this action is timely under the provisions of 28 U.S.C. §1446(b) as the United States has thirty days from the date of service to remove to federal court.

- 2 -

5. Copies of all pleadings received by the defendant United States in this proceeding are attached hereto.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

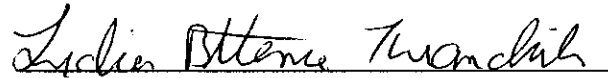
March 11, 2005


BARBARA HEALY SMITH
United States Attorney's Office
One Courthouse Way
Suite 9200
Boston, Massachusetts 02210

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

BARBARA HEALY SMITH
Assistant United States Attorney


LYDIA BOTTOME TURANCHIK
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6560
Lydia.D.Bottome@usdoj.gov

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

RECEIVED

Superior Court

Department of the Trial Court.

05 SEP 16 PM 3:58
of the Commonwealth
Civil Action

No.

05-0197 B

CitiBank, N.A. as Trustee

Plaintiff (s)

v.

SUMMONS

John P. Phelan, Wendy M. Phelan, David LaBrie, The United States of America,

Defendant (s)

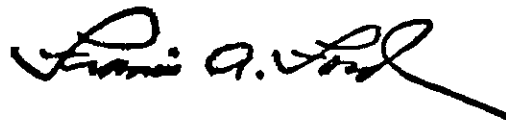
O'Callaghan Construction Co. and the Commonwealth of MA DOR

* To the above-named Defendant: The United States of America

You are hereby summoned and required to serve upon Raymond C. Pelote, Harmon Law P.C.
plaintiff's attorney,
 whose address is 150 California Street, Newton, MA 02458
 an answer to the complaint which is herewith served upon you, within 20 days after
 service of this summons upon you, exclusive of the day of service. If you fail to do so,
 judgement by default will be taken against you for the relief demanded in the complaint.
 You are also required to file your answer to the complaint in the SUPERIOR COURT
 Department of the Trial Court at WORCESTER either before service upon plaintiff's
 attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-
 claim any claim which you may have against the plaintiff which arises out of the
 transaction of occurrence that is the subject matter of the plaintiff's claim or you will
 thereafter be barred from making such claim in any other action.

Witness, SUZANNE V. DEL VECCHIO, Esquire, at Worcester, the fourth
 day of February in the year of our Lord two thousand and five


 Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
 If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT —
 CONTRACT EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

*

NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but
 if you claim to have a defense, either you or your attorney must serve a copy of your written
 answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior
 Court, Room 21.

**Commonwealth of Massachusetts
County of Worcester
The Superior Court**

CIVIL DOCKET# WOCV2005-00197-B

RE: Citibank NA Trustee v Phelan et al

**TO: David M Rosen, Esquire
Harmon Law Offices (Mark P)
150 California Street
PO Box 610389
Newton Highlands, MA 02461-0389**

TRACKING ORDER - X TRACK

You are hereby notified that this case is on the accelerated (X) track as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

| | |
|--|-------------------|
| Service of process made and return filed with the Court | 05/04/2005 |
| Response to the complaint filed (also see MRCP 12) | 07/03/2005 |
| Firm trial date set | 08/02/2005 |
| Case disposed | 09/01/2005 |

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session B sitting in Rm 18 (Session B) at Worcester Superior Court.

Dated: 02/03/2005

**Francis A. Ford
Clerk of the Courts**

**BY: Denise D. Foley/Gail Dempsey
Assistant Clerk**

**Location: Rm 18 (Session B)
Telephone: 508-770-1899, Ext. 129 or Ext. 108 (Session Clerk)**

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

**Commonwealth of Massachusetts
County of Worcester
The Superior Court**

CIVIL DOCKET# WOCV2005-00197-B

RE: Citibank NA Trustee v Phelan et al

**TO: Raymond C Pelote, Esquire
Harmon Law Offices (Mark P)
150 California Street
PO Box 610389
Newton, MA 02458-0389**

TRACKING ORDER - X TRACK

You are hereby notified that this case is on the **accelerated (X) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

| | |
|---|------------|
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This case is assigned to session B sitting in Rm 18 (Session B) at Worcester Superior Court.


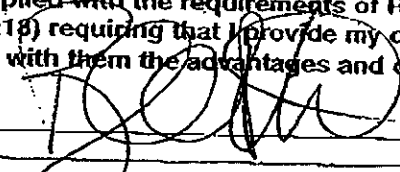
Dated: 02/03/2005

**Francis A. Ford
Clerk of the Courts**

**BY: Denise D. Foley/Gail Dempsey
Assistant Clerk**

**Location: Rm 18 (Session B)
Telephone: 508-770-1899, Ext. 129 or Ext. 108 (Session Clerk)**

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

| | | | | | | | |
|---|--------------------------|---------------|----------------------|---|--|---|---------------|
| CIVIL ACTION COVER SHEET | | DOCKET NO.(S) | | Trial Court of Massachusetts Superior Court Department County: Worcester | |  | |
| PLAINTIFF(S) Citibank, N.A., as Trustee | | | | DEFENDANT(S) John P. Phelan, Wendy M. Phelan, David La Brie, The United States of America, O'Callaghan Construction Company and the Commonwealth of Massachusetts Department of Revenue | | | |
| ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Raymond C. Pelote, Harmon Law Offices, P.C. 150 California St., Newton, MA 02458 (617) 558-0500 Board of Bar Overseers number: 655475 | | | | ATTORNEY (if known) | | | |
| Origin code and track designation | | | | | | | |
| Place an x in one box only: | | | | | | | |
| <input checked="" type="checkbox"/> 1. F01 Original Complaint | | | | <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) | | | |
| <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) | | | | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) | | | |
| <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) | | | | <input type="checkbox"/> 6. E10 Summary Process Appeal (X) | | | |
| TYPE OF ACTION AND TRACK DESIGNATION (See reverse side) | | | | | | | |
| CODE NO. | TYPE OF ACTION (specify) | TRACK | IS THIS A JURY CASE? | | | | |
| E99 | Interpleader | (x) | () Yes (x) No | | | | |
| The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only. | | | | | | | |
| TORT CLAIMS (Attach additional sheets as necessary) | | | | | | | |
| A. Documented medical expenses to date: | | | | | | | |
| 1. Total hospital expenses | | | | | | | \$ |
| 2. Total Doctor expenses | | | | | | | \$ |
| 3. Total chiropractic expenses | | | | | | | \$ |
| 4. Total physical therapy expenses | | | | | | | \$ |
| 5. Total other expenses (describe) | | | | | | | \$ |
| Subtotal \$ | | | | | | | \$ |
| B. Documented lost wages and compensation to date | | | | | | | |
| C. Documented property damages to date | | | | | | | |
| D. Reasonably anticipated future medical and hospital expenses | | | | | | | |
| E. Reasonably anticipated lost wages | | | | | | | |
| F. Other documented items of damages (describe) | | | | | | | |
| G. Brief description of plaintiff's injury, including nature and extent of injury (describe) | | | | | | | |
| TOTAL \$ 20,389.50 | | | | | | | \$ |
| CONTRACT CLAIMS (Attach additional sheets as necessary) | | | | | | | |
| Provide a detailed description of claim(s): Plaintiff is holding surplus funds that it would like to pay into Court. Plaintiff further requests that it be discharged from any further obligation involving this matter. | | | | | | | |
| TOTAL \$ 20,389.50 | | | | | | | \$ |
| PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT | | | | | | | |
| "I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." | | | | | | | |
| Signature of Attorney of Record  | | | | | | | DATE: 1/27/05 |

COMMONWEALTH OF MASSACHUSETTS**WORCESTER, SS.****SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.****CITIBANK, N.A. AS TRUSTEE,****Plaintiff,****v.****JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, O'CALLAGHAN
CONSTRUCTION COMPANY AND THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,****Defendants.****COMPLAINT IN INTERPLEADER
(Mortgage Foreclosure Surplus Proceeds)****INTRODUCTION**

This action is being brought after a foreclosure sale on a property 812 W. Shore Drive, Winchendon, MA 01475. Citibank, N.A., as Trustee, the foreclosing mortgagee, is currently holding surplus funds that it would like to pay into Court. Citibank, N.A., as Trustee further requests that it be discharged from any further obligation involving this matter.

In the above action, Citibank, N.A., as Trustee respectfully represents:

PARTIES

1. The Plaintiff, Citibank, N.A., as Trustee, (hereinafter referred to as "Citibank") is a corporation having its usual place of business c/o Chase Manhattan Mortgage Corporation, 10790 Rancho Bernardo Road, San Diego, CA 92127.

2. The Defendant, John P. Phelan, is upon information and belief, an individual with a last known address of 812 W Shore Drive, Ashburnham, MA 01430.
3. The Defendant, Wendy M. Phelan, is upon information and belief, an individual c/o Attorney John J. Curley, III, McEvilly & Curley, 48 West Street, Suite 1, Leominster, MA 01453.
4. The Defendant, David La Brie, is upon information and belief, an individual c/o Attorney Peter M. Mirageas, 27 Prospect Street, Marlboro, MA 01752.
5. The Defendant, The United States of America, is upon information and belief, a federal agency with a usual business address of P.O. Box 9112, Stop 20800, JFK Federal Building, Boston, MA 02203.
6. The Defendant, O'Callaghan Construction Company, is upon information and belief, a company c/o Attorney Edwin H. Howard, Bonville & Howard, 154 Prichard Street, Fitchburg, MA 01420.
7. The Defendant, The Commonwealth of Massachusetts Department of Revenue, is upon information and belief, a state agency with a usual business address of 100 Cambridge Street, Boston, MA 02114.

FACTS

8. The Plaintiff, Citibank, was the holder by assignment of a first mortgage given by John P. Phelan and Wendy M. Phelan to Chase Manhattan Bank USA, N.A., dated April 11, 2003 and recorded in the Worcester County (Worcester District) Registry of Deeds in Book 29719 at Page 50, securing the real estate located at 812 W. Shore Drive, Winchendon, MA 01475 ("the property").

9. On October 22, 2004, Citibank foreclosed on the mortgaged property by public auction.
10. The mortgaged property was sold to a third party for \$270,000.00.
11. After satisfaction of the indebtedness to the Plaintiff, including costs of foreclosure and sale, accrued interest and late charges in the aggregate sum of \$249,610.50, there is surplus now held by the Plaintiff in the amount of \$20,389.50. See Exhibit "A" attached hereto.
12. The following persons and entities appear of record to be all of the persons or entities having an interest in said funds held by Citibank, to wit:
 - (a) The Defendant, John P. Phelan, is the former holder of the equity of redemption and holder of a declaration of homestead.
 - (b) The Defendant, Wendy M. Phelan, is the former holder of the equity of redemption.
 - (c) The Defendant, David La Brie, is the holder of an Execution dated May 26, 2004 and recorded June 4, 2004 in the Worcester County Registry of Deeds in Book 33801 at Page 77 in the original amount of \$12,907.77.
 - (d) The Defendant, The United States of America, is the holder of a federal tax lien dated August 12, 2004 and recorded August 18, 2004 in the Worcester County Registry of Deeds in Book 34400 at Page 307 in the original amount of \$56,978.09.
 - (e) The Defendant, O'Callaghan Construction Company, is the holder of an Execution dated August 16, 2004 and recorded August 20,

2004 in the Worcester County Registry of Deeds in Book 34426 at Page 281 in the original amount of \$8,726.84.

- (f) The Defendant, The Massachusetts Department of Revenue, is the holder of a state tax lien dated October 4, 2004 and recorded October 5, 2004 in the Worcester County Registry of Deeds in Book 34774 at Page 366 in the original amount of \$13,652.77.

COUNT ONE

(DECLARATORY JUDGMENT)

13. Citibank repeats and alleges Paragraph 1 through 12 and incorporates herein by reference.
14. Citibank believes that it runs a risk that adverse claims to the surplus proceeds may be made by Defendants in this action.
15. Citibank is unaware of the respective rights of the Defendants and is unable to determine to whom the funds are justly due and payable.
16. Citibank's only claim in interest in the surplus proceeds is to have the costs and expenses that are associated with this action paid from the surplus proceeds.

Citibank has at all times been willing to pay the surplus to such entities or persons as should lawfully be entitled to received the same and to whom Citibank could safely and without hazard to itself pay the same and Citibank hereby offers to transfer the surplus to this Court at such time and under such conditions as the Court may Order and Direct.

WHEREFORE, the Plaintiff, Citibank, N.A., as Trustee, prays that:

1. The said Defendants be ordered to appear and present their claims, if any, to the surplus funds;
2. That the Plaintiff be allowed its costs, expenses and attorney's fees in this Interpleader Action;
3. That the Plaintiff be permitted to pay all surplus funds held by it in the amount of \$20,389.50, less its fees and costs incurred in this Interpleader Action, into this Court;
4. That the rights of the Defendants herein named be determined by this Court as to the surplus funds paid into the Court;
5. That this action be discontinued and dismissed as to the Plaintiff, it being merely a stakeholder and having no interest in said funds; and
6. For such other and further relief as this Court deems just and proper.

CITIBANK, N.A., AS TRUSTEE,
By its Attorneys

~~Raymond C. Pelote~~

BBØ#: 655475

David M. Rosen

BBO#: 552866

Harmon Law Offices, P.C.

150 California Street

Newton, MA 02458

MAILING ADDRESS:

P.O. Box 610389

Newton Highlands, MA 02461-0389

(617) 558-0500

January 27, 2005

EXHIBIT "A"

SUCCESSFUL BID: \$ 270,000.00

PAYMENT TO PRINCIPAL: \$ 249,610.50

SURPLUS FUNDS: \$ 20,389.50

A true copy by photostatic process
made by
Asst. Clerk *[Signature]*

I hereby certify on 3/11/05 that the
foregoing document is true and correct copy of the
☐ electronic docket in the captioned case
☐ electronically filed original filed on _____
☒ original filed in my office on 3/11/05

Sarah A. Thornton
Clerk, U.S. District Court
District of Massachusetts

By: *[Signature]*
Deputy Clerk

**CIVIL ACTION
COVER SHEET**

Docket No. (S)

05-0197B

**Trial Court of Massachusetts
Superior Court Department**
County: Worcester**PLAINTIFF(S)**

Citibank, N.A., as Trustee

DEFENDANT(S) John P. Phelan, Wendy M. Phelan, David La Brie, The United States of America, O'Callaghan Construction Company and the Commonwealth of Massachusetts Department of Revenue**ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE**Raymond C. Pelote, Harmon Law Offices, P.C.
150 California St., Newton, MA 02458 (617) 558-0500**ATTORNEY (if known)**

Board of Bar Overseers number: 655475

Origin code and track designation

Place an x in one box only:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 1. F01 Original Complaint | <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) |
| <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) |
| <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) | <input type="checkbox"/> 6. E10 Summary Process Appeal (X) |

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

| | | | |
|----------|--------------------------|-------|----------------------|
| CODE NO. | TYPE OF ACTION (specify) | TRACK | IS THIS A JURY CASE? |
| E99 | Interpleader | (X) | () Yes (X) No |

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.**TORT CLAIMS**

(Attach additional sheets as necessary)

- A. Documented medical expenses to date:
- | | |
|--|----------|
| 1. Total hospital expenses | \$ |
| 2. Total Doctor expenses | \$ |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |
| Subtotal \$ | |
- B. Documented lost wages and compensation to date
- C. Documented property damages to date
- D. Reasonably anticipated future medical and hospital expenses
- E. Reasonably anticipated lost wages
- F. Other documented items of damages (describe)
- G. Brief description of plaintiff's injury, including nature and extent of injury (describe)
- TOTAL \$ 20,389.50**

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

Plaintiff is holding surplus funds that it would like to pay into Court. Plaintiff further requests that it be discharged from any further obligation involving this matter.

TOTAL \$ 20,389.50**PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT****"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."**

Signature of Attorney of Record

DATE: 1/27/05

COMMONWEALTH OF MASSACHUSETTS

5-275
WORCESTER, SS.

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 05-01970**

CITIBANK, N.A. AS TRUSTEE,

Plaintiff,

v.

**JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, O'CALLAGHAN
CONSTRUCTION COMPANY AND THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,**

Defendants.

FILED

FEB 03 2005

ATTEST:

CLERK

**COMPLAINT IN INTERPLEADER
(Mortgage Foreclosure Surplus Proceeds)**

INTRODUCTION

This action is being brought after a foreclosure sale on a property 812 W. Shore Drive, Winchendon, MA 01475. Citibank, N.A., as Trustee, the foreclosing mortgagee, is currently holding surplus funds that it would like to pay into Court. Citibank, N.A., as Trustee further requests that it be discharged from any further obligation involving this matter.

In the above action, Citibank, N.A., as Trustee respectfully represents:

PARTIES

1. The Plaintiff, Citibank, N.A., as Trustee, (hereinafter referred to as "Citibank") is a corporation having its usual place of business c/o Chase Manhattan Mortgage Corporation, 10790 Rancho Bernardo Road, San Diego, CA 92127.

2. The Defendant, John P. Phelan, is upon information and belief, an individual with a last known address of 812 W Shore Drive, Ashburnham, MA 01430.
3. The Defendant, Wendy M. Phelan, is upon information and belief, an individual c/o Attorney John J. Curley, III, McEvilly & Curley, 48 West Street, Suite 1, Leominster, MA 01453.
4. The Defendant, David La Brie, is upon information and belief, an individual c/o Attorney Peter M. Mirageas, 27 Prospect Street, Marlboro, MA 01752.
5. The Defendant, The United States of America, is upon information and belief, a federal agency with a usual business address of P.O. Box 9112, Stop 20800, JFK Federal Building, Boston, MA 02203.
6. The Defendant, O'Callaghan Construction Company, is upon information and belief, a company c/o Attorney Edwin H. Howard, Bonville & Howard, 154 Prichard Street, Fitchburg, MA 01420.
7. The Defendant, The Commonwealth of Massachusetts Department of Revenue, is upon information and belief, a state agency with a usual business address of 100 Cambridge Street, Boston, MA 02114.

FACTS

8. The Plaintiff, Citibank, was the holder by assignment of a first mortgage given by John P. Phelan and Wendy M. Phelan to Chase Manhattan Bank USA, N.A., dated April 11, 2003 and recorded in the Worcester County (Worcester District) Registry of Deeds in Book 29719 at Page 50, securing the real estate located at 812 W. Shore Drive, Winchendon, MA 01475 ("the property").

9. On October 22, 2004, Citibank foreclosed on the mortgaged property by public auction.
10. The mortgaged property was sold to a third party for \$270,000.00.
11. After satisfaction of the indebtedness to the Plaintiff, including costs of foreclosure and sale, accrued interest and late charges in the aggregate sum of \$249,610.50, there is surplus now held by the Plaintiff in the amount of \$20,389.50. See Exhibit "A" attached hereto.
12. The following persons and entities appear of record to be all of the persons or entities having an interest in said funds held by Citibank, to wit:
 - (a) The Defendant, John P. Phelan, is the former holder of the equity of redemption and holder of a declaration of homestead.
 - (b) The Defendant, Wendy M. Phelan, is the former holder of the equity of redemption.
 - (c) The Defendant, David La Brie, is the holder of an Execution dated May 26, 2004 and recorded June 4, 2004 in the Worcester County Registry of Deeds in Book 33801 at Page 77 in the original amount of \$12,907.77.
 - (d) The Defendant, The United States of America, is the holder of a federal tax lien dated August 12, 2004 and recorded August 18, 2004 in the Worcester County Registry of Deeds in Book 34400 at Page 307 in the original amount of \$56,978.09.
 - (e) The Defendant, O'Callaghan Construction Company, is the holder of an Execution dated August 16, 2004 and recorded August 20,

2004 in the Worcester County Registry of Deeds in Book 34426 at Page 281 in the original amount of \$8,726.84.

- (f) The Defendant, The Massachusetts Department of Revenue, is the holder of a state tax lien dated October 4, 2004 and recorded October 5, 2004 in the Worcester County Registry of Deeds in Book 34774 at Page 366 in the original amount of \$13,652.77.

COUNT ONE

(DECLARATORY JUDGMENT)

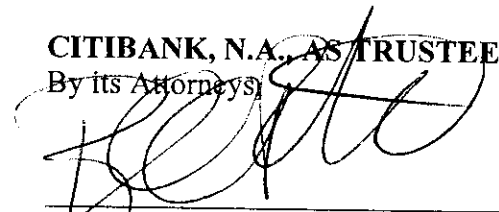
13. Citibank repeats and alleges Paragraph 1 through 12 and incorporates herein by reference.
14. Citibank believes that it runs a risk that adverse claims to the surplus proceeds may be made by Defendants in this action.
15. Citibank is unaware of the respective rights of the Defendants and is unable to determine to whom the funds are justly due and payable.
16. Citibank's only claim in interest in the surplus proceeds is to have the costs and expenses that are associated with this action paid from the surplus proceeds.

Citibank has at all times been willing to pay the surplus to such entities or persons as should lawfully be entitled to received the same and to whom Citibank could safely and without hazard to itself pay the same and Citibank hereby offers to transfer the surplus to this Court at such time and under such conditions as the Court may Order and Direct.

WHEREFORE, the Plaintiff, Citibank, N.A., as Trustee, prays that:

1. The said Defendants be ordered to appear and present their claims, if any, to the surplus funds;
2. That the Plaintiff be allowed its costs, expenses and attorney's fees in this Interpleader Action;
3. That the Plaintiff be permitted to pay all surplus funds held by it in the amount of \$20,389.50, less its fees and costs incurred in this Interpleader Action, into this Court;
4. That the rights of the Defendants herein named be determined by this Court as to the surplus funds paid into the Court;
5. That this action be discontinued and dismissed as to the Plaintiff, it being merely a stakeholder and having no interest in said funds; and
6. For such other and further relief as this Court deems just and proper.

CITIBANK, N.A., AS TRUSTEE,
By its Attorneys



Raymond C. Pelote

BBO#: 655475

David M. Rosen

BBO#: 552866

Harmon Law Offices, P.C.

150 California Street

Newton, MA 02458

MAILING ADDRESS:

P.O. Box 610389

Newton Highlands, MA 02461-0389

(617) 558-0500

January 27, 2005

EXHIBIT "A"

SUCCESSFUL BID: \$ 270,000.00

PAYMENT TO PRINCIPAL: \$ 249,610.50

SURPLUS FUNDS: \$ 20,389.50

A true copy by photostatic process

Attest:

Assoc. Clerk



2/9/05

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. WOCV2005-0197

B

**CITIBANK, N.A., AS TRUSTEE,
Plaintiff**

v

**JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, O'CALLAGHAN CONSTRUCTION
COMPANY AND THE COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
REVENUE
Defendants**

**DEFENDANT, DAVID LA BRIE'S
ANSWER AND CROSS-CLAIMS**

FILED

FEB 09 2005

ATTEST:

James A. Ford
CLERK

ANSWER

NOW COMES the Defendant, David La Brie, and answers the Complaint as follows:

PARTIES

1. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
2. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
3. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
4. Admitted.
5. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.

2

6. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
7. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.

FACTS

8. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
9. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
10. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
11. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph or in Exhibit A.
12.
 - (A) Defendant states that this paragraph contains multiple allegations. Further, this paragraph asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
 - (B) Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
 - (C) Admitted.
 - (D) Defendant admits to the accuracy of the recording information recited in this paragraph, but as to the factual allegations contained within this paragraph Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
 - (E) Defendant admits to the accuracy of the recording information recited in this paragraph, but as to the factual allegations contained within this paragraph Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.

- (F) Defendant admits to the accuracy of the recording information recited in this paragraph, but as to the factual allegations contained within this paragraph Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.

COUNT ONE

13. Defendant repeats and realleges his answers to Paragraphs one through twelve and incorporates said answers herein by reference.
14. Defendant states that this paragraph contains a statement of belief and that no response is required. To the extent that a response is required, Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
15. Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.
16. Defendant states that this paragraph contains multiple assertions. To the extent an answer is required, Defendant has insufficient information to either admit or deny the allegations contained in this paragraph.

CROSS-CLAIM vs. ALL OTHER DEFENDANTS

1. Defendant David La Brie (hereinafter "La Brie") avers that he has an equitable interest or lien in the subject foreclosure surplus proceeds pursuant to his Attachment issued by the Worcester District Court on February 20, 2004 and recorded in the Worcester County Registry of Deeds, Book 32882, Page 335, recorded February 23, 2004 (a true copy attached hereto as **Exhibit A**).
2. La Brie avers that he has an equitable interest or lien in the subject foreclosure surplus proceeds pursuant to his Executions (one against John P. Phelan and one against Wendy M. Phelan) both issued by the Worcester District Court on May 26, 2004 in the amount of \$12,907.77 and recorded in the Worcester County Registry of Deeds, Book 33801, Page 77, and at Book 33801, Page 81, respectively, on June 4, 2004 (a true copy of both Executions are attached hereto collectively as **Exhibit B**).
3. La Brie avers that he is owed no less than \$12,907.77 as of June 4, 2004, plus further interests and costs pursuant to the Execution.

4. Upon information and belief, all other equitable interests or liens upon the subject foreclosure surplus proceeds are junior and subordinate to La Brie's equitable interest or lien.
5. La Brie, his equitable interest or lien being superior to any interest or lien of any other Defendant, is therefore entitled to all of the foreclosure surplus proceeds up to the value of his equitable interest or lien, including interest, costs and attorney fees.

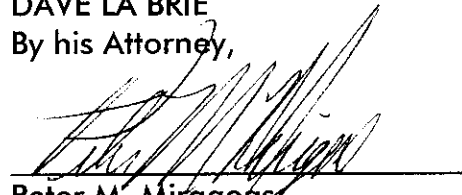
WHEREFORE, La Brie prays:

1. That this Honorable Court enter judgment for La Brie and against all other Defendants on this Cross-Claim.
2. That this Honorable award damages to La Brie in the amount this Court deems appropriate, with interest, costs, and attorney fees.
3. That this Honorable Court order said damages to be paid out of the foreclosure surplus proceeds.
4. That this Honorable Court award La Brie such other relief as it deems just and necessary.

Respectfully submitted

DAVE LA BRIE

By his Attorney,



Peter M. Mirageas

BBO #544583

27 Prospect Street

Marlborough, MA 01752

(508) 460-9698

Dated: February 8, 2005

EXHIBIT "A"

The Commonwealth of Massachusetts
Massachusetts Trial Court
District Court Department

Atty. M. Miragias, Esq.
27 Prospect Street
Marlborough, MA
01752

WORCESTER, SS.

CENTRAL WORCESTER DIVISION

DAVE LA BRIE
 PLAINTIFF

V.

JOHN P. PHELAN & WENDY M. PHELAN
 D/O/A JP FLOORING PLUS
 DEFENDANTS

Civil Action No. 0462 CV 323**WRIT OF ATTACHMENT**

(Rule 4.1)

A TRUE COPY ATTEST**DEPUTY SHERIFF**

To the Sheriffs of our several counties or their deputies, or a constable of any City or Town within the Commonwealth:

We command you to attach the goods or estate of defendant JOHN P. PHELAN AND WENDY M. PHELAN, of WINCHENDON, WORCESTER COUNTY, MA, to the value of \$ 12,000, the amount authorized, as prayed for by plaintiff DAVE LA BRIE of LEOMINSTER, WORCESTER CITY, MA whose attorney is PETER M. MIRAGIAS of MARLBORO, MA in an action brought by said plaintiff against said defendant in this court, and make due return of this writ with your doings there on.

The complaint in this case was filed on FEB 20, 2004. This attachment was approved on 2-20-04 by [Signature], J., in the amount of \$ 12,000.

WITNESS, LoConto, Paul, Presiding Justice, Worcester, 2-20-04. Thomas J. Noonan
 THOMAS J. NOONAN CLERK

PROOF OF ATTACHMENT

Worcester County Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100
 Worcester, ss

02/23/2004
 By virtue of this writ, I this day at 11:56am attached as the property of the within named Defendants JOHN P. PHELAN and WENDY M. PHELAN all their right, title and interest in and to any real estate in WINCHENDON or elsewhere in the County of Worcester. The above is a true copy so much of my return as relates to the attachment of real estate.

ATTEST:

Deputy Sheriff Melissa A Waggon



2004 00028309

Form 15 CMF

Bk: 32882 Pg: 335 Doc: ATT
 Page: 1 of 1 02/23/2004 01:02 PM

[Signature]
 Deputy Sheriff

ATTEST: WORC. Anthony J. Vigliotti, Register

EXHIBIT "B"

EXECUTION

DOCKET NUMBER

200462CV000323Trial Court of Massachusetts
District Court DepartmentCASE NAME **DAVE LA BRIE vs. JOHN P. PHELAN D/B/A J P FLOORING PLUS**

JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED

P01 DAVE LA BRIE

CURRENT COURT

Worcester District Court
50 Harvard Street
Worcester, MA 01608-1198
(508) 757-8350

JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION

P01 PETER M. MIRAGEAS
LAW OFCS OF PETER M MIRAGEAS
27 PROSPECT STREET
MARLBORO, MA 01752

FURTHER ORDERS OF THE COURT

JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED

D01 JOHN P. PHELAN D/B/A J P FLOORING PLUS

WINCHENDON, MA 01475



2004 00100738

Bk: 33801 Pg: 77 Doc: EXC
Page: 1 of 4 08/04/2004 03:36 PM

A TRUE COPY ATTEST

DEPUTY SHERIFF

TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. c. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:

The judgment creditor(s) named above has recovered judgment against the judgment debtor named above in the amount shown below.

WE COMMAND YOU, therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional postjudgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below commencing from the "Date Execution Issued" shown below at the "Annual Postjudgment Interest Rate" shown below, and to collect your own fees, as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undischarged.

| | |
|--|-----------------------|
| 1. Judgment Total | \$12,857.05 |
| 2. Date Judgment Entered | 05/14/2004 |
| 3. Date Execution Issued | 05/26/2004 |
| 4. Number of Days from Judgment to Execution (Line 3 - Line 2) | 12 |
| 5. Annual Postjudgment Interest Rate of 12.00% / 365 = Daily Interest Rate | 0.032877% |
| 6. Postjudgment Interest from Judgment to Execution (Lines 1x4x5) | \$50.72 |
| 7. Postjudgment Costs (if any) | \$0.00 |
| 8. Credits (if any) | \$0.00 |
| 9. EXECUTION TOTAL (Lines 1 + 6 + 7, minus Line 8) | \$12,907.77 |
| LEVYING OFFICER: (a) Add daily interest from date execution issued. | |
| (b) Add your fees as provided by law: | |
| TESTE OF FIRST JUSTICE | DATE EXECUTION ISSUED |
| WITNESS: Hon. Paul F. LoConto | 05/26/2004 |
| CLERK/ADMINISTRATOR/ASST. CLERK | |
| X | |

Worcester, SS. Worcester

June 4, 2004

By virtue of an Execution which issued on a Judgment in favor of

David La Brie

against **John P. Phelan d/b/a J P Flooring Plus,**

812 West Short Drive, Ashburnham MA

which was rendered on **May 14, 2004** said Execution having been placed in my hands for the purpose of taking lands of said Judgment Debtor , I have this day levied on and taken all right, title and interest which the said Judgment Debtor had not exempt by law from attachment or levy on Execution on **February 23, 2204**, the date when same was attached on mesne process or which he now have in and to a certain parcel of land in said **Winchendon** bounded and described as follows:

(see attached for legal description)

The above is a true copy of so much of my return as related to Levy of Real Estate. And I suspend further action at this time on written request of the Plaintiff's attorney.

Mail to:

David N. DiTommaso, Esquire
Law Offices of Peter M. Mirageas
27 Prospect Street
Marlborough MA 01752

ATTEST:


Melissa A. Wagg
Deputy Sheriff

PARCEL 1:

A certain parcel of land on the easterly side of West Shore Drive in the Town of Winchendon, Worcester County, Massachusetts, being shown as Lot #813 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point on said plan where Lot #813 meets Lot #812 and West Shore Drive, and running in a northeasterly direction in a straight line for a distance of sixty (60) feet to a point on said plan; **THENCE** running in the same general direction as shown on said plan for a further distance of fifty (50) feet. **THENCE** turning and running in a southeasterly direction for a distance of one hundred forty-five and 70/100 (145.70) feet to a point on said plan. **THENCE**, running in the same direction one (1) foot, more or less, to a point along the water. **THENCE**, turning and running along the water in a southwesterly direction a distance of eighty (80) feet, more or less, to a point along the water. **THENCE**, turning and running in a northwesterly direction a distance of seven (7) feet, more or less, to a point on said plan. **THENCE**, running in the same direction a further distance of one hundred sixty-four and 85/100 (164.85) feet to the point of beginning.

Containing 15,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 219.

PARCEL 2:

A certain parcel of land on the easterly side of West Shore Drive in the Town of Winchendon, Worcester County, Mass., being shown as Lot #814 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point on said plan where Lot #814 meets Lot #813 along West Shore Drive and running in a northeasterly direction for a distance of seventy-six (76) feet. **THENCE**, running in the same

UICB15 PM 2:53

direction along a curved line having a radius of one hundred fifty (150) feet for a distance of thirty-eight (38) feet. **THENCE**, turning and running in a southeasterly direction a distance of one hundred sixty-six and 33/100 (166.33) feet to a point on said plan. **THENCE**, running in the same direction two (2) feet, more or less, to a point along the water. **THENCE**, turning and running along the water in a southwesterly direction, eighty-five (85) feet, more or less, to a point along the water. **THENCE**, turning and running in a northwesterly direction a distance of one (1) foot, more or less, to a point on said plan. **THENCE**, running in the same direction, a distance of one hundred forty-five and 70/100 (145.70) feet to the point of beginning.

Containing 15,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 223.

PARCEL 31

A certain parcel of land on the Easterly side of West Shore Drive in the Town of Winchendon, Mass., Worcester County, being shown as Lot #812 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:



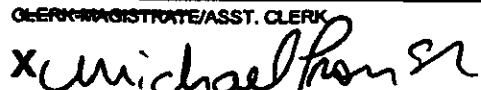
BEGINNING at a point where Lot #812 meets Lot #813 and West Shore Drive and running on a straight line in a southeasterly direction for a distance of one hundred sixty-four and 85/100 (164.85) feet to a point on said plan. **THENCE**, running in the same direction seven (7) feet, more or less, to a point along the water. **THENCE**, running along the water in a westerly direction for a distance of seventy-five (75) feet, more or less, as shown on said plan. **THENCE**, running northwesterly for a distance of one (1) foot, more or less, to a point on said plan. **THENCE**, running in the same direction and a further distance of one hundred eighty-seven and 54/100 (187.54) feet to a point along West shore Drive. **THENCE**, running northeasterly for a distance of one hundred (100) feet to the point of beginning.

Containing 16,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 215.

ATTEST: WORC. Anthony J. Vigliotti, Register

| | | |
|---|--|---|
| EXECUTION | DOCKET NUMBER 200462CV000323 | Trial Court of Massachusetts District Court Department |
| CASE NAME DAVE LA BRIE vs. JOHN P. PHELAN D/B/A J P FLOORING PLUS | | |
| JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED P01 DAVE LA BRIE | CURRENT COURT Worcester District Court 50 Harvard Street Worcester, MA 01808-1198 (508) 757-8350 | |
| JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION P01 PETER M. MIRAGEAS LAW OFCS OF PETER M MIRAGEAS 27 PROSPECT STREET MARLBORO, MA 01752 | FURTHER ORDERS OF THE COURT | |
| JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED D02 WENDY M. PHELAN D/B/A J P FLOORING PLUS 812 WEST SHORE DR. WINCHENDON, MA 01475 | <div style="text-align: center;">  2004 06100738 Bk: 33801 Pg: 81 Doc: EXC Page: 1 of 4 08/04/2004 03:38 PM </div> <div style="text-align: right; margin-top: 20px;"> A TRUE COPY ATTEST  DEPUTY SHERIFF </div> | |
| <p>TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. c. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:</p> <p>The judgment creditor(s) named above has recovered judgment against the judgment debtor named above in the amount shown below.</p> <p>WE COMMAND YOU, therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional postjudgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below commencing from the "Date Execution Issued" shown below at the "Annual Postjudgment Interest Rate" shown below, and to collect your own fees, as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undischarged.</p> | | |
| 1. Judgment Total | | \$12,857.05 |
| 2. Date Judgment Entered | | 05/14/2004 |
| 3. Date Execution Issued | | 05/26/2004 |
| 4. Number of Days from Judgment to Execution (Line 3 - Line 2) | | 12 |
| 5. Annual Postjudgment Interest Rate of 12.00% / 365 = Daily Interest Rate | | 0.032877% |
| 6. Postjudgment Interest from Judgment to Execution (Lines 1x4x5) | | \$50.72 |
| 7. Postjudgment Costs (if any) | | \$0.00 |
| 8. Credits (if any) | | \$0.00 |
| 9. EXECUTION TOTAL (Lines 1 + 6 + 7, minus Line 8) | | \$12,907.77 |
| LEVYING OFFICER: (a) Add daily interest from date execution issued. | | |
| (b) Add your fees as provided by law: | | |
| TESTE OF FIRST JUSTICE WITNESS: Hon. Paul F. LoConto | DATE EXECUTION ISSUED 05/26/2004 | CLERK/MAGISTRATE/ASST. CLERK  |

Worcester, SS. Worcester

June 4, 2004

By virtue of an Execution which issued on a Judgment in favor of

Dave La Brie

against **Wendy M. Phelan d/b/a J P Flooring Plus,**

812 West Shore Drive, Ashburnham MA

which was rendered on **May 14, 2004** said Execution having been placed in my hands for the purpose of taking lands of said Judgment Debtor , I have this day levied on and taken all right, title and interest which the said Judgment Debtor had not exempt by law from attachment or levy on Execution on **February 23, 2004**, the date when same was attached on mesne process or which he now have in and to a certain parcel of land in said **Winchendon** bounded and described as follows:

(see attached for legal description)

The above is a true copy of so much of my return as related to Levy of Real Estate. And I suspend further action at this time on written request of the Plaintiff's attorney.

Mail to:

David N. DiTommaso, Esquire
Law Offices of Peter M. Mirageas
27 Prospect Street
Marlborough MA 01752

ATTEST:


Melissa A. Wagg
Deputy Sheriff

PARCEL 1:

A certain parcel of land on the easterly side of West Shore Drive in the Town of Winchendon, Worcester County, Massachusetts, being shown as Lot #813 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point on said plan where Lot #813 meets Lot #812 and West Shore Drive, and running in a northeasterly direction in a straight line for a distance of sixty (60) feet to a point on said plan; ~~THENCE~~ running in the same general direction as shown on said plan for a further distance of fifty (50) feet. ~~THENCE~~ turning and running in a southeasterly direction for a distance of one hundred forty-five and 70/100 (145.70) feet to a point on said plan. ~~THENCE~~, running in the same direction one (1) foot, more or less, to a point along the water. ~~THENCE~~, turning and running along the water in a southwesterly direction a distance of eighty (80) feet, more or less, to a point along the water. ~~THENCE~~, turning and running in a northwesterly direction a distance of seven (7) feet, more or less, to a point on said plan. ~~THENCE~~, running in the same direction a further distance of one hundred sixty-four and 85/100 (164.85) feet to the point of beginning.

Containing 15,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 219.

PARCEL 2:

A certain parcel of land on the easterly side of West Shore Drive in the Town of Winchendon, Worcester County, Mass., being shown as Lot #814 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point on said plan where Lot #814 meets Lot #813 along West Shore Drive and running in a northeasterly direction for a distance of seventy-six (76) feet. ~~THENCE~~, running in the same

U11015 PH 2:53

direction along a curved line having a radius of one hundred fifty (150) feet for a distance of thirty-eight (38) feet. **TRENCHE**, turning and running in a southeasterly direction a distance of one hundred sixty-six and 33/100 (166.33) feet to a point on said plan. **TRENCHE**, running in the same direction two (2) feet, more or less, to a point along the water. **TRENCHE**, turning and running along the water in a southwesterly direction, eighty-five (85) feet, more or less, to a point along the water. **TRENCHE**, turning and running in a northwesterly direction a distance of one (1) foot, more or less, to a point on said plan. **TRENCHE**, running in the same direction, a distance of one hundred forty-five and 70/100 (145.70) feet to the point of beginning.

Containing 15,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 223.

PARCEL 3:

A certain parcel of land on the Easterly side of West Shore Drive in the Town of Winchendon, Mass., Worcester County, being shown as Lot #812 on a Plan entitled: Definitive Subdivision Plan of Far Hills, Section #8, in Winchendon, Mass., developed by Sunset Lake Development Corp., Dunn Road, Ashburnham, Mass., dated June 27, 1966, and recorded with Worcester North District Registry of Deeds in Plan Book 138, Plan 6, and Worcester County Registry of Deeds in Plan Book 304, Page 23. Said parcel being further bounded and described as follows:

BEGINNING at a point where Lot #812 meets Lot #813 and West Shore Drive and running on a straight line in a southeasterly direction for a distance of one hundred sixty-four and 85/100 (164.85) feet to a point on said plan. **TRENCHE**, running in the same direction seven (7) feet, more or less, to a point along the water. **TRENCHE**, running along the water in a westerly direction for a distance of seventy-five (75) feet, more or less, as shown on said plan. **TRENCHE**, running northwesterly for a distance of one (1) foot, more or less, to a point on said plan. **TRENCHE**, running in the same direction and a further distance of one hundred eighty-seven and 54/100 (187.54) feet to a point along West shore Drive. **TRENCHE**, running northeasterly for a distance of one hundred (100) feet to the point of beginning.

Containing 16,000 square feet, more or less.

The granted premises are conveyed subject to easements, restrictions, and conditions and agreements of record as amended.

Meaning and intending to convey and hereby conveying the same premises conveyed to us by deed of NORTH ATLANTIC LAKE PROPERTIES, INC. dated May 1, 1974, and recorded with Worcester District Registry of Deeds in Book 5513, Page 215.

CERTIFICATE OF SERVICE

I, Peter M. Mirageas, attorney for defendant, David La Brie, hereby certify that on February 8, 2005, I caused a copy of Defendant, David La Brie's Answer and Cross-Claim to all other Defendants to be served by first class mail, postage prepaid, to the following:

Raymond C. Pelote, Esquire
Harmon Law Offices, P.C.
150 California Street
Newton, MA 02458

John P. Phelan
812 West Shore Drive
Winchendon, MA 01430

Wendy M. Phelan
812 West Shore Drive
Winchendon, MA 01430

United States of America
P.O. Box 9112
Stop 20800
JFK Federal Building
Boston, MA 02203

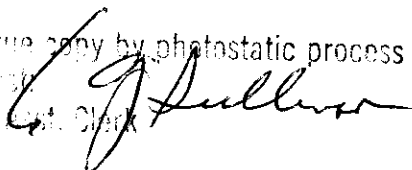
O'Callaghan Construction Company
c/o Edwin H. Howard, Esquire
Bonville & Howard
154 Prichard Street
Fitchburg, MA 01420

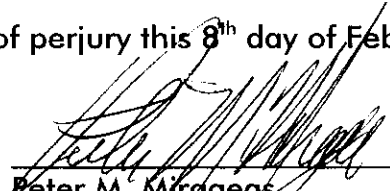
Commonwealth of Massachusetts
Department of Revenue
100 Cambridge Street
Boston, MA 02114

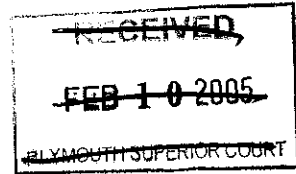
Signed under the pains and penalties of perjury this 8th day of February 2005.

A true copy by photostatic process

Attest:


Peter M. Mirageas


Peter M. Mirageas
BBO No. 544583
27 Prospect Street
Marlborough, MA 01752
(508) 460-9698



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.
WORCESTER

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 05-00197-B

CITIBANK, N.A. AS TRUSTEE,

Plaintiff,

v.

JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, AND THE COMMONWEALTH
OF MASSACHUSETTS DEPARTMENT OF
REVENUE,

Defendants.

FILED

FEB 15 2005

ATTEST:

Thomas A. Ford
CLERK

3

ACCEPTANCE OF SERVICE FOR WENDY M. PHELAN

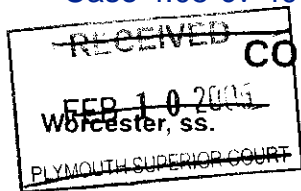
The undersigned hereby accepts service of the Summons, Complaint and Civil
Action Cover Sheet for Wendy M. Phelan in the above-referenced action.

John J. Curley, III

Attorney John J. Curley, III
McEvilly & Curley
48 West Street, Suite 1
Leominster, MA 01453

Dated: January 31, 2005

A true and correct copy of this document
has been filed by the undersigned
G. Sullivan



COMMONWEALTH OF MASSACHUSETTS

Superior Court
Department of the Trial Court
of the Commonwealth
Civil Action

05-0197

No.

CitiBank, N.A. as Trustee

Plaintiff (s)

v.

John P. Phelan, Wendy M. Phelan, David

La Brie, The United States of,

and the Commonwealth of MA DOR

Defendant (s)

SUMMONS

- * To the above-named Defendant: Wendy Phelan, c/o Atty. John J. Curley, III., McEvilly & Curley, 48 West St., Suite 1, Leominster, MA 01453

You are hereby summoned and required to serve upon Raymond C. Pelote, plaintiff's attorney, Harmon Law Offices, P.C., whose address is 150 California St., Newton, MA 02458 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the SUPERIOR COURT Department of the Trial Court at WORCESTER either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-claim any claim which you may have against the plaintiff which arises out of the transaction of occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, SUZANNE V. DEL VECCHIO, Esquire, at Worcester, the seventh day of February in the year of our Lord two thousand and five

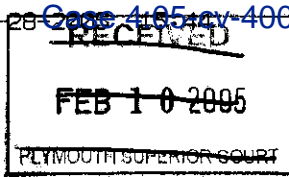
Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT — CONTRACT/EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

- * NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior Court, Room 21.



COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 05-00197-B

CITIBANK, N.A. AS TRUSTEE,

Plaintiff,

v.

JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, AND THE COMMONWEALTH
OF MASSACHUSETTS DEPARTMENT OF
REVENUE,

Defendants.

FILED

FEB 15 2005

ATTEST:

Francis A. Ford
CLERK

ACCEPTANCE OF SERVICE FOR DAVID LA BRIE

The undersigned hereby accepts service of the Summons, Complaint and Civil
Action Cover Sheet for David La Brie in the above-referenced action.

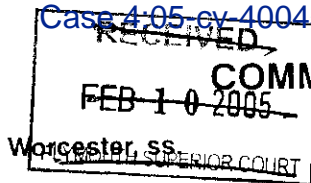
Peter M. Miragcas
Attorney Peter M. Miragcas
27 Prospect Street
Marlboro, MA 01752

Dated: January 31, 2005

A true copy by photostatic process

Attest:

G. Sullivan
Asst. Clerk



Superior Court
Department of the Trial Court
of the Commonwealth
Civil Action

05-0197

No.

CitiBank, N.A. as Trustee

Plaintiff (s)

v.

John P. Phelan, Wendy M. Phelan, David La Brie
The United States of America, the
Commonwealth of MA DOR

Defendant (s)

SUMMONS

- * To the above-named Defendant: David La Brie, c/o/ Atty. Peter M. Mirageas, 27 Prospect St.
Marlboro, MA 01752

You are hereby summoned and required to serve upon Raymond C. Pelote
Harmon Law Offices, P.C., plaintiff's attorney,
whose address is 150 California St., Newton MA 02458
an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgement by default will be taken against you for the relief demanded in the complaint.
You are also required to file your answer to the complaint in the SUPERIOR COURT
Department of the Trial Court at WORCESTER either before service upon plaintiff's
attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-
claim any claim which you may have against the plaintiff which arises out of the
transaction of occurrence that is the subject matter of the plaintiff's claim or you will
thereafter be barred from making such claim in any other action.

Witness, SUZANNE V. DEL VECCHIO, Esquire, at Worcester, the seventh
day of February in the year of our Lord two thousand and five

Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT —
CONTRACT — EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

- * NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but
if you claim to have a defense, either you or your attorney must serve a copy of your written
answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior
Court, Room 21.

2/15/05

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

**SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 05-0179 B**

197B

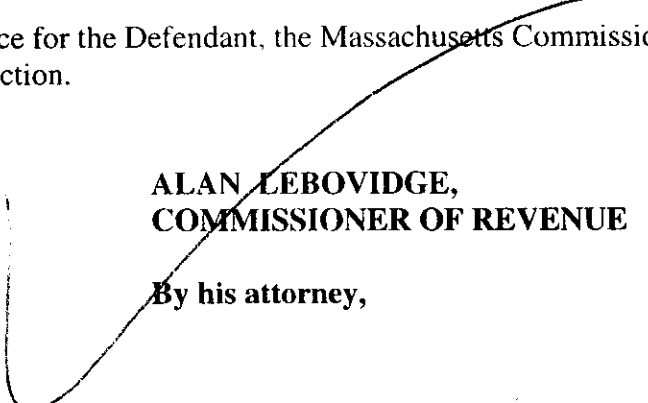
CITIBANK, N.A. AS TRUSTEE,)
Plaintiff)
v.)
JOHN P. PHELAN, WENDY M. PHELAN,)
DAVID LA BRIE, THE UNITED STATES OF AMERICA,)
O'CALLAGHAN CONSTRUCTION COMPANY AND)
COMMONWEALTH OF MASSACHUSETTS)
DEPARTMENT OF REVENUE,)
Defendants)

APPEARANCE

Please enter my appearance for the Defendant, the Massachusetts Commissioner of Revenue, in the above-entitled action.

**ALAN LEBOVIDGE,
COMMISSIONER OF REVENUE**

By his attorney,


Eileen Ryan McAuliffe (BBO# 435260)
Counsel to the Commissioner
Massachusetts Department of Revenue
Litigation Bureau - P.O. Box 9565
100 Cambridge Street
Boston, MA 02114-9565
Phone (617) 626-3217

Dated: February 14, 2005

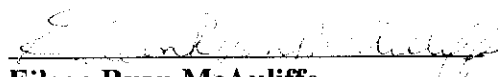
#187437/ERM

A true copy by the Court Clerk
Attest:
Court Clerk

CERTIFICATE OF SERVICE

I, Eileen Ryan McAuliffe, certify that I have served a copy of the within Appearance by first-class mail, postage prepaid, upon:

Raymond C. Pelote
Harmon Law Offices, P.C.
P.O. Box 610389
Newton Highlands, MA 02461-0389


Eileen Ryan McAuliffe
BBO# 435260

Dated: February 14, 2005

#187437/ERM

A true copy by photostatic process
Admitted
[Signature]

2/23/05

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 05-0197

CITIBANK, N.A. AS TRUSTEE,

Plaintiff,

v.

JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, AND THE COMMONWEALTH
OF MASSACHUSETTS DEPARTMENT OF
REVENUE, AND O'CALLAGHAN CONSTRUCTION
COMPANY

Defendants.

FILED

FEB 23 2005

ATTEST:

Francis A. Ford
CLERK

ACCEPTANCE OF SERVICE FOR
O'CALLAGHAN CONSTRUCTION COMPANY

The undersigned hereby accepts service of the Summons, Complaint and Civil
Action Cover Sheet for O'Callaghan Construction Company in the above-referenced
action.

6

[Signature]

Attorney Edwin H. Howard
Bonville & Howard
154 Prichard Street
Fitchburg, MA 01420

Dated: *2/9/05*
~~January~~, 2005

A true copy by photostatic process
Attest:

[Signature]
Asst. Clerk

2/23/05

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

Superior Court
Department of the Trial Court
of the Commonwealth
Civil Action

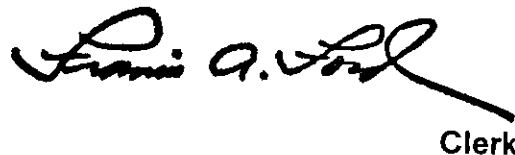
No. 05-0197

CitiBank, N.A. as Trustee

Plaintiff (s)

v.

SUMMONS

John P. Phelan, Wendy M. Phelan, David La Brie
The United States of America and the Commonwealth of
MA DOR and O'Callaghan Construction Company
Defendant (s)* To the above-named Defendant: O'Callaghan Construction Company, c/o Atty. Edwin Howard
154 Prichard Street, Fitchburg, MA 01420You are hereby summoned and required to serve upon Raymond C. Pelote
Harmon Law Offices, P.C. plaintiff's attorney,
whose address is 150 California St., Newton, MA 02458an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgement by default will be taken against you for the relief demanded in the complaint.
You are also required to file your answer to the complaint in the SUPERIOR COURT
Department of the Trial Court at WORCESTER either before service upon plaintiff's
attorney or within a reasonable time thereafter.Unless otherwise provided by Rule 13 (a), your answer must state as a counter-
claim any claim which you may have against the plaintiff which arises out of the
transaction of occurrence that is the subject matter of the plaintiff's claim or you will
thereafter be barred from making such claim in any other action.Witness, SUZANNE V. DEL VECCHIO, Esquire, at Worcester, the ninth
day of January in the year of our Lord two thousand and five

Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT —
CONTRACT EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

*

NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but
if you claim to have a defense, either you or your attorney must serve a copy of your written
answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior
Court, Room 21.

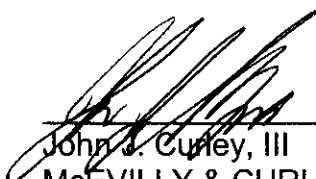
Drive, Winchendon, MA 01475 and is without sufficient knowledge to either admit or deny the remaining allegations contained therein.

9. Wendy Phelan admits the allegations contained in Paragraph 9 of the Plaintiff's Complaint.
10. Wendy Phelan admits the allegations contained in Paragraph 10 of the Plaintiff's Complaint.
11. Wendy Phelan is without sufficient information to either admit or deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint.
12. Wendy Phelan admits so much of the allegations contained in Paragraph 12 of the Plaintiff's Complaint as allege that she is a former holder of the equity of redemption and is without sufficient information to either admit or deny the remaining allegations contained therein.
13. Wendy Phelan repeats her responses to the allegations set forth in Paragraphs 1 through 12 of the Plaintiff's Complaint as if set forth again herein in their entirety.
14. Wendy Phelan is without sufficient information to either admit or deny the allegations contained in Paragraph 14 of the Plaintiff's Complaint.
15. Wendy Phelan is without sufficient information to either admit or deny the allegations contained in Paragraph 15 of the Plaintiff's Complaint.
16. Wendy Phelan is without sufficient information to either admit or deny the allegations contained in Paragraph 16 of the Plaintiff's Complaint.

WHEREFORE, Wendy Phelan prays that this Honorable Court:

1. Determine the amount of any surplus funds held by the Plaintiff which are legally or equitably due to Wendy M. Phelan.
2. Order that the amount of any surplus funds due to Wendy M. Phelan be paid to her by the Plaintiff or from the funds paid into Court.
3. For such other and further relief as this Honorable Court may deem to be meet and just.

WENDY M. PHELAN
By her attorney,



John J. Curley, III
McEVILLY & CURLEY
48 West Street
Leominster, MA 01453
(978)534-3556
BBO #: 109140

A true copy by photostatic process
of the original
Asst. Clerk 

MAK 16 2005

ATTEST:

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Frank A. [Signature]
CLERK

CITIBANK, N.A., AS TRUSTEE,

Plaintiff,

v.

JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LABRIE, THE UNITED STATES
OF AMERICA, O'CALLAGHAN
CONSTRUCTION CO., and THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,

Defendants.

COPY

2005 MAR 17 AM 11:17

Civil No. _____

05-40045 FDS

05-197B

NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

The defendant United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, respectfully states as follows:

1. The United States of America has been named as a defendant to the civil action that is now pending in the Superior Court Department, Worcester County, for the Commonwealth of Massachusetts, entitled Citibank, N.A., as Trustee v. John Phelan, et al., Case No. 05-0197-B.

2. This action is removable to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. §§ 1441, 1442 and/or 1444.

3. No prior removal of this action has been attempted.

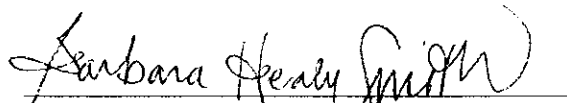
4. The removal of this action is timely under the provisions of 28 U.S.C. §1446(b) as the United States has thirty days from the date of service to remove to federal court.

- 2 -

5. Copies of all pleadings received by the defendant United States in this proceeding are attached hereto.

I hereby certify that a true copy of the above document was served upon (each party appearing *pro se* and) the attorney of record for each other party by mail on

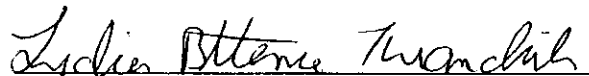
March 11, 2005


BARBARA HEALY SMITH
United States Attorney's Office
One Courthouse Way
Suite 9200
Boston, Massachusetts 02210

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

BARBARA HEALY SMITH
Assistant United States Attorney


LYDIA BOTTOME TURANCHIK
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6560
Lydia.D.Bottome@usdoj.gov

A true copy by photostatic process
Attest:
Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

RECEIVED
Superior Court
U.S. ATTORNEY
Department of the Trial Court.
of the Commonwealth
Civil Action

No.

05-0197 B

CitiBank, N.A. as Trustee

Plaintiff (s)

v.

SUMMONS

John P. Phelan, Wendy M. Phelan, David Defendant(s)

LaBrie, The United States of America,

O'Callaghan Construction Co. and the Commonwealth of MA DOR

* To the above-named Defendant: The United States of America

You are hereby summoned and required to serve upon Raymond C. Pelote, Harmon Law P.C.
plaintiff's attorney,
 whose address is 150 California Street, Newton, MA 02458
 an answer to the complaint which is herewith served upon you, within 20 days after
 service of this summons upon you, exclusive of the day of service. If you fail to do so,
 judgement by default will be taken against you for the relief demanded in the complaint.
 You are also required to file your answer to the complaint in the SUPERIOR COURT
 Department of the Trial Court at WORCESTER either before service upon plaintiff's
 attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counter-
 claim any claim which you may have against the plaintiff which arises out of the
 transaction of occurrence that is the subject matter of the plaintiff's claim or you will
 thereafter be barred from making such claim in any other action.

Witness, SUZANNE V. DEL VECCHIO, Esquire, at Worcester, the fourth
 day of February in the year of our Lord two thousand and five

A true copy by photostatic process

Attest:

Asst. Clerk

[Signature]
Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
 If a separate summons is used for each defendant, each should be addressed to that particular defendant.

PLEASE CIRCLE TYPE OF ACTION INVOLVED: TORT — MOTOR VEHICLE TORT —
 CONTRACT EQUITABLE RELIEF — CH. 93A — MEDICAL MALPRACTICE — OTHER.

*

NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but
 if you claim to have a defense, either you or your attorney must serve a copy of your written
 answer within 20 days as specified herein AND also file the original in the Clerk's Office, Superior
 Court, Room 21.

Commonwealth of Massachusetts**County of Worcester****The Superior Court****CIVIL DOCKET# WOCV2005-00197-B****RE: Citibank NA Trustee v Phelan et al**

TO: David M Rosen, Esquire
Harmon Law Offices (Mark P)
150 California Street
PO Box 610389
Newton Highlands, MA 02461-0389

TRACKING ORDER - X TRACK

You are hereby notified that this case is on the accelerated (X) track as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION**DEADLINE**

| | |
|---|------------|
| Service of process made and return filed with the Court | 05/04/2005 |
| Response to the complaint filed (also see MRCP 12) | 07/03/2005 |
| Firm trial date set | 08/02/2005 |
| Case disposed | 09/01/2005 |

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session B sitting in Rm 18 (Session B) at Worcester Superior Court.

Dated: 02/03/2005

Francis A. Ford
Clerk of the Courts

BY: Denise D. Foley/Gail Dempsey
Assistant Clerk

Location: Rm 18 (Session B)
Telephone: 508-770-1899, Ext. 129 or Ext. 108 (Session Clerk)

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

A true copy by photostatic process
Attest:
Asst. Clerk

**Commonwealth of Massachusetts
County of Worcester
The Superior Court**

CIVIL DOCKET# WOCV2005-00197-B

RE: Citibank NA Trustee v Phelan et al

TO: Raymond C Pelote, Esquire
Harmon Law Offices (Mark P)
150 California Street
PO Box 610389
Newton, MA 02458-0389

TRACKING ORDER - X TRACK

You are hereby notified that this case is on the **accelerated (X) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

| | |
|---|------------|
| Service of process made and return filed with the Court | 05/04/2005 |
| Response to the complaint filed (also see MRCP 12) | 07/03/2005 |
| Firm trial date set | 08/02/2005 |
| Case disposed | 09/01/2005 |

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session B sitting in Rm 18 (Session B) at Worcester Superior Court.

Dated: 02/03/2005

Francis A. Ford
Clerk of the Courts

BY: Denise D. Foley/Gail Dempsey
Assistant Clerk

Location: Rm 18 (Session B)
Telephone: 508-770-1899, Ext. 129 or Ext. 108 (Session Clerk)

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

A true copy by photostatic process
Attest:
Asst. Clerk

| | | | | |
|---|--|---|---|----------------------|
| CIVIL ACTION COVER SHEET | | DOCKET NO.(S) | Trial Court of Massachusetts Superior Court Department County: <u>Worcester</u> | |
| PLAINTIFF(S) Citibank, N.A., as Trustee | | DEFENDANT(S) John P. Phelan, Wendy M. Phelan, David La Brie, The United States of America, O'Callaghan Construction Company and the Commonwealth of Massachusetts Department of Revenue | | |
| ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Raymond C. Pelote, Harmon Law Offices, P.C. 150 California St., Newton, MA 02458 (617) 558-0500 Board of Bar Overseers number: 655475 | | ATTORNEY (if known) | | |
| Origin code and track designation Place an x in one box only: | | | | |
| <input checked="" type="checkbox"/> 1. F01 Original Complaint | | <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) | | |
| <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) | | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) | | |
| <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) | | <input type="checkbox"/> 6. E10 Summary Process Appeal (X) | | |
| TYPE OF ACTION AND TRACK DESIGNATION (See reverse side) CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE? | | | | |
| E99 Interpleader | | (X) () Yes (X) No | | |
| The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only. | | | | |
| TORT CLAIMS (Attach additional sheets as necessary) | | | | |
| A. Documented medical expenses to date: | | | | |
| 1. Total hospital expenses | | | | \$ |
| 2. Total Doctor expenses | | | | \$ |
| 3. Total chiropractic expenses | | | | \$ |
| 4. Total physical therapy expenses | | | | \$ |
| 5. Total other expenses (describe) | | | | \$ |
| Subtotal \$ | | | | \$ |
| B. Documented lost wages and compensation to date | | | | |
| C. Documented property damages to date | | | | |
| D. Reasonably anticipated future medical and hospital expenses | | | | |
| E. Reasonably anticipated lost wages | | | | |
| F. Other documented items of damages (describe) | | | | |
| \$ | | | | |
| G. Brief description of plaintiff's injury, including nature and extent of injury (describe) | | | | |
| A true copy by photostatic process Attest: _____ Asst. Clerk TOTAL \$ 20,389.50 | | | | |
| CONTRACT CLAIMS (Attach additional sheets as necessary) | | | | |
| Provide a detailed description of claim(s): Plaintiff is holding surplus funds that it would like to pay into Court. Plaintiff further requests that it be discharged from any further obligation involving this matter. | | | | |
| TOTAL \$ 20,389.50 | | | | |
| PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT | | | | |
| "I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." | | | | |
| Signature of Attorney of Record _____ | | | | DATE: <u>1/27/05</u> |

COMMONWEALTH OF MASSACHUSETTS**WORCESTER, SS.****SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.****CITIBANK, N.A. AS TRUSTEE,****Plaintiff,****v.****JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LA BRIE, THE UNITED STATES OF
AMERICA, O'CALLAGHAN
CONSTRUCTION COMPANY AND THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,****Defendants.****COMPLAINT IN INTERPLEADER
(Mortgage Foreclosure Surplus Proceeds)****INTRODUCTION**

This action is being brought after a foreclosure sale on a property 812 W. Shore Drive, Winchendon, MA 01475. Citibank, N.A., as Trustee, the foreclosing mortgagee, is currently holding surplus funds that it would like to pay into Court. Citibank, N.A., as Trustee further requests that it be discharged from any further obligation involving this matter.

In the above action, Citibank, N.A., as Trustee respectfully represents:

PARTIES

1. The Plaintiff, Citibank, N.A., as Trustee, (hereinafter referred to as "Citibank") is a corporation having its usual place of business c/o Chase Manhattan Mortgage Corporation, 10790 Rancho Bernardo Road, San Diego, CA 92127.

2. The Defendant, John P. Phelan, is upon information and belief, an individual with a last known address of 812 W Shore Drive, Ashburnham, MA 01430.
3. The Defendant, Wendy M. Phelan, is upon information and belief, an individual c/o Attorney John J. Curley, III, McEvilly & Curley, 48 West Street, Suite 1, Leominster, MA 01453.
4. The Defendant, David La Brie, is upon information and belief, an individual c/o Attorney Peter M. Mirageas, 27 Prospect Street, Marlboro, MA 01752.
5. The Defendant, The United States of America, is upon information and belief, a federal agency with a usual business address of P.O. Box 9112, Stop 20800, JFK Federal Building, Boston, MA 02203.
6. The Defendant, O'Callaghan Construction Company, is upon information and belief, a company c/o Attorney Edwin H. Howard, Bonville & Howard, 154 Prichard Street, Fitchburg, MA 01420.
7. The Defendant, The Commonwealth of Massachusetts Department of Revenue, is upon information and belief, a state agency with a usual business address of 100 Cambridge Street, Boston, MA 02114.

FACTS

8. The Plaintiff, Citibank, was the holder by assignment of a first mortgage given by John P. Phelan and Wendy M. Phelan to Chase Manhattan Bank USA, N.A., dated April 11, 2003 and recorded in the Worcester County (Worcester District) Registry of Deeds in Book 29719 at Page 50, securing the real estate located at 812 W. Shore Drive, Winchendon, MA 01475 ("the property").

9. On October 22, 2004, Citibank foreclosed on the mortgaged property by public auction.
10. The mortgaged property was sold to a third party for \$270,000.00.
11. After satisfaction of the indebtedness to the Plaintiff, including costs of foreclosure and sale, accrued interest and late charges in the aggregate sum of \$249,610.50, there is surplus now held by the Plaintiff in the amount of \$20,389.50. See Exhibit "A" attached hereto.
12. The following persons and entities appear of record to be all of the persons or entities having an interest in said funds held by Citibank, to wit:
 - (a) The Defendant, John P. Phelan, is the former holder of the equity of redemption and holder of a declaration of homestead.
 - (b) The Defendant, Wendy M. Phelan, is the former holder of the equity of redemption.
 - (c) The Defendant, David La Brie, is the holder of an Execution dated May 26, 2004 and recorded June 4, 2004 in the Worcester County Registry of Deeds in Book 33801 at Page 77 in the original amount of \$12,907.77.
 - (d) The Defendant, The United States of America, is the holder of a federal tax lien dated August 12, 2004 and recorded August 18, 2004 in the Worcester County Registry of Deeds in Book 34400 at Page 307 in the original amount of \$56,978.09.
 - (e) The Defendant, O'Callaghan Construction Company, is the holder of an Execution dated August 16, 2004 and recorded August 20,

2004 in the Worcester County Registry of Deeds in Book 34426 at Page 281 in the original amount of \$8,726.84.

- (f) The Defendant, The Massachusetts Department of Revenue, is the holder of a state tax lien dated October 4, 2004 and recorded October 5, 2004 in the Worcester County Registry of Deeds in Book 34774 at Page 366 in the original amount of \$13,652.77.

COUNT ONE

(DECLARATORY JUDGMENT)

13. Citibank repeats and alleges Paragraph 1 through 12 and incorporates herein by reference.
14. Citibank believes that it runs a risk that adverse claims to the surplus proceeds may be made by Defendants in this action.
15. Citibank is unaware of the respective rights of the Defendants and is unable to determine to whom the funds are justly due and payable.
16. Citibank's only claim in interest in the surplus proceeds is to have the costs and expenses that are associated with this action paid from the surplus proceeds.

Citibank has at all times been willing to pay the surplus to such entities or persons as should lawfully be entitled to received the same and to whom Citibank could safely and without hazard to itself pay the same and Citibank hereby offers to transfer the surplus to this Court at such time and under such conditions as the Court may Order and Direct.

WHEREFORE, the Plaintiff, Citibank, N.A., as Trustee, prays that:

1. The said Defendants be ordered to appear and present their claims, if any, to the surplus funds;
2. That the Plaintiff be allowed its costs, expenses and attorney's fees in this Interpleader Action;
3. That the Plaintiff be permitted to pay all surplus funds held by it in the amount of \$20,389.50, less its fees and costs incurred in this Interpleader Action, into this Court;
4. That the rights of the Defendants herein named be determined by this Court as to the surplus funds paid into the Court;
5. That this action be discontinued and dismissed as to the Plaintiff, it being merely a stakeholder and having no interest in said funds; and
6. For such other and further relief as this Court deems just and proper.

CITIBANK, N.A., AS TRUSTEE,
By its Attorneys

Raymond C. Pelote

BBO#: 655475

David M. Rosen

BBO#: 552866

Harmon Law Offices, P.C.

150 California Street

Newton, MA 02458

MAILING ADDRESS:

P.O. Box 610389

Newton Highlands, MA 02461-0389

(617) 558-0500

January 27, 2005

A true copy by photostatic process

Attest:

Asst. Clerk

EXHIBIT "A"

SUCCESSFUL BID: \$ 270,000.00

PAYMENT TO PRINCIPAL: \$ 249,610.50

SURPLUS FUNDS: \$ 20,389.50

A true copy by photostatic process

Attest:

Asst. Clerk

I hereby certify on 3/11/05 that the foregoing document is true and correct copy of the

- ☐ electronic docket in the captioned case
☐ electronically filed original filed on _____
☒ original filed in my office on 3/11/05

Sarah A. Thornton
Clerk, U.S. District Court
District of Massachusetts

By: Kathleen H. Barrett
Deputy Clerk

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, ss.

CITIBANK, N.A., AS TRUSTEE,

Plaintiff,

V.

JOHN P. PHELAN, WENDY M. PHELAN,
DAVID LABRIE, THE UNITED STATES
OF AMERICA, O'CALLAGHAN
CONSTRUCTION CO., AND THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,


Defendants.

Superior Court Department
Civil Action No. 05-0197-B

NOTICE OF FILING OF NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, on March 11, 2005, a Notice of Removal of the above-titled action was filed with the Clerk of the United States District Court for the District of Massachusetts. The new civil action number is 05-40045-FDS. The Notice was filed by the United States of America.

PLEASE TAKE FURTHER NOTICE that, as provided by 28 U.S.C. § 1446(d), the Suffolk County Superior Court “shall proceed no further unless and until the case is remanded.”

A true copy by photostatic process
Attest: 

Attest:

Asst Clerk